IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6762 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAVJIBHAI MAVJI JOGANI

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioners

MR PANDYA, Ld. AGP for the Respondents.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/10/2000

ORAL JUDGEMENT

1. Mr.P. V. Hathi appearing on behalf of the petitioner and Mr.Pandya appearing on behalf of the respondent nos.1, 2 and 3.

2. In the present petition, Rule has been issued by

this Court on 01/05/1996 and ad-interim relief in terms of para-12(D) has been granteed by this Court. Until further order, no further order passed by this Court on 01/05/1996. In the present petition, the affidavit-in-reply has been filed on behalf of the respondent no.2 - Shri A. M. Solanki, Collector, Amreli on 6th October, 1999. Against the said reply, the petitioner no.4 - Keshubhai Mavjibhai Jogani has filed affidavit-in-rejoinder on 28th October, 1999 which has been taken on record. In the present petition, the petitioners have challenged the order dated 15th November, 1994 passed by the Collector, Amreli at Annexure-F to the petition and the order dated 28th April, 1995 passed by the Secretary, Revenue Department (Appeals), Gujarat State, Ahmedabad at Annexure-G to the petition and further prayer has been made by the petitioner to direct the respondents not to act and implement the orders in any manner and to treat the disputed Survey No.332 (Part) after restoring the said Revenue Entry Nos.3548, 9447 and 9448 on the revenue record.

3. The brief facts of the giving rise to this petition are as under.

The petitioners submit that the Survey No.332 admeasuring 23 acre 16 gunthas situated in Amreli was the property of Nagnath Mahadev Mandir Trust, which was a registered public trustand the same was under the management of Mamlatdar, Amreli. Different persons including the father of the petitioners were cultivating the said land as tenants. However, the Mamlatdar, Amreli, after taking necessary permission of the Charity Commissioner, sold on 24th Feburary, 1970 part of the said land admeasuring 11 acres 26 gunthas to the second petitioner Chhaganbhai Nathabhai Jogani and his name was duly entered in the revenue record, by Entry No.4278, without any notice to the petitioners. It was wrongly mentioned that the land was of new tenure land. On coming to know of such insertion restricting the right of the petitioner to dispose of the land, the petitioners made an application to the Mamlatdar, Amreli on 6th November, 1990 to delete the erroneous entry of new tenure made in the revenue record on 11th April, 1991 and the necessary order was passed restoring the original entry of old tenure land in the said revenue record. The said order was certified to be corrected on 19th August, 1991 by revenue Entry No.9447. The petitioners also pointed out that they partitioned their land between themselves by family arrangement in August, 1991 and the necessary entry of partition came to be certified as

entry No.9448 on 19th August, 1991. The petitioner nos.1 and 4 made an application to the Collector under sectioin 65 of the Bombay Land Revenue Code for converting the lands, which had gone to their respective shares being 2 acres and 14 gunthas andthe District Development Officer, granted such permission by his order dated 21/03/1992 and 02/05/1994 for constructing the residential houses and to dispose of the remaining plots as can be seen from the copy of the said order. According to the petitioners, the petitioners spent a large amountafter obtaining necessary building permission, for making construction of residential houses and some of the plots are already disposed of by outright sale deeds in favour of third parties including the second respondent. It is also necessary to be noted that the Entry No.9447 was made by the order of the Mamlatdar on 11th April, 1991 and no objection was taken to the several further actions of the petitioners and there was no scope to exercise revisional powers after lapse of a reasonable time namely, after one year as consistently held by the Supreme Court and the High Court of Gujarat. It is also submitted by the petitioners that the disputed land belong to Nagnath Mahadev Trust, a registered public trust, which was sold by the Administrator, Mamlatdar, Amreli on 24th February, 1970 by an outright sale made in favour of the father of the petitioner Mavji Khoda Jogani. The said sale deed specifically mention that the sale was an outright sale and was not subject to the provisions of the Bombay Tenancy Act as clarified by the Collector, Amreli, in his letter dated 11th February, 1970. Not only that there was no entry of restricted tenure on the record from 1950-51 to 1969-70 and no entry could have been made, thereafter, without any prior notice to the petitioners. If there had been any such restricted tenure, the said fact must have been incorporated in the sale deed executed by Revenue Officer in his capacity as the Administrator of the Trust. However, for some inexplicable reasons and withoutany notice to thepetitioners the word "new tenure" came to be written in the revenue record of 1970-71 without any enquiry or notice to the petitioners. Such a change could not have been made being illiterate agriculturists and being unaware of the true legal position they made an application to delete those words and/or to convert the land in old tenure lands which application was in fact not necessary. However, the Mamlatdar, respondent no.3 who was also the Administrator of the Trust - an executant of the sale deed, passed an order to delete those words on 11th April, 1991 and the necessary change was made by the revenue Entry No.9447. No appeal or Revision Application was filed against the said order or

the entry so made by the Mamlatdar, Amreli. On relying upon the said order at Annexure-D dated 11th April, 1991, the concerned petitioners made an application under section 65 of the Land Revenue Code, as submitted above and spent large amount in making the construction after due permission and dispose of some plots of land in favour of the third parties, to the knowledge of the concerned respondents. However, the respondent no.2 issued show cause notice on 13th July, 1994 to the petitioners alleging that the said land was probably a new tenure without subject to the restrictions contained in section 43 of the Bombay Tenancy Act and that, therefore, Entry No.9447 made pursuant to the Mamlatdar order dated 11th April, 1991 was liable to beset aside in his suomotu exercise of power conferred by rule 108 and/or section 211 of the Bombay Land Revenue Code. According to the petitioners that even the Collector, as can be seen, was not sure whether the land was of restricted tenure from his show cause notice which has been issued by the Collector to the petitioners. The said show cause notice was issued in respect of the five revenue entries, which the Collector wanted to revise in exercise of power conferred by rule 108(6), the petitioners in reply to the said notice filed a detailed explanation on 9th August, 1994 whether they contended, inter alia, that the said revenue entries were properly made and even otherwise he had no jurisdiction to upset the orders and the entries after lapse of three years. Citing the judgment reported in 1994 (1) GLR 822. It was also pointed out that the said lands were already non-agricultural lands pursuant to the order dated 21st March, 1995 passed by the District Development Officer, Amreli. In view of these facts, the notice issued by the Collector, Amreli was required to be withdrawn and/or rejected. However, the Collector by his order dated 15th November, 1994 set aside the Entry Nos.3548, 9447 and 9448 mostly on the assumption that the said lands were new tenure lands and being subject to the conditions mentioned in section 43 of the Bombay Tenancy Act and the same could not have been partitioned without prior permission of the competent officer. Because, ultimately, the Government suffers huge loss in not receiving the premium amount which was payable on deletion of the entry of new tenure contained in the revenue record. Being aggrieved by the order dated 15th November, 1994 passed by the Collector, Amreli, the petitioiners have filed a Revision Application on 12/02/1994 to the Secretary (Appeals), Revenue Department, Ahmedabad and the same was registered as Revision Application No.SSRD/HKM/AML/6 of 1994, the said Revision Application was heard by the Secretary (Appeals)

on 10th April, 1995 where again the petitioners submitted written submissions reiterating the whole history of the suit lands and as to how the entries were made in the revenue records. However, the Secretary (Appeals) by his order dated 28th April, 1995 rejected the Revision Application and confirmed the order of the Collector mainly on the assumption that the orders were nullity and can be set aside at any time and for which there was no rule of limitation. Against that this petition has been filed by the petitioners. On the ground that both the authorities have committed seriously erred in cancelling the Revenue Entry Nos.3548, 9447 and 9448 which are not sustainable in law or which are otherwise arbitrary, illegal and unreasonable manner and not having jurisdiction to pass such orders. It is also contended before this court by the petitioners that the revisional powers cannot be exercised after lapse of three years of the making of the entries to the knowledge of all concerned and relying upon some of the judicial pronouncements of the Appex Court as well as this Court. It is submitted by the petitioners that Entry No.3548 which was certified in the Year-1965 and the name of Chhagan Mavji was entered in place of his father Mavji Khoda and after the period of 29 years, such entry has been taken in appeal or revision by the authories and cancelled the same which cannot be reopened.

4. Mr.P. V. Hathi, learned advocate for the petitioners has submitted that the Secretary (Appeals) has also jumped to a conclusion not on any concrete material but on surmises and conjectures that the said revenue entry made in 1965 was made with a view to defeatd the right of the other heirs and they were not given notice under section 135-D of the Land Revenue Code. Mr.P. V. Hathi, learned advocate for the petitioners has also submitted that the Secretary (Appeals) did not dispassionately examine the correctness of the finding of the Collector with regard to Entry Nos.9447 and 9448, the word "new tenure" was not in existence on the revenue record upto 1970-71 and the transaction of sale on that basis had taken place on 24th February, 1970 and subsequently, the "new tenure" word has been included without any notice to the petitioners or purchaser, pursuant to the sale deed executed on 24th February, 1970. The said contained clear recital passed on the letter of the Collector himself that the sale was an outright and was not subject to the provisions of the Tenancy Act. According to Mr.P. V. Hathi there was no restriction as contained in section 43 of the Tenancy Act and the necessary order was passed by the Mamlatdar which came to be certified in the Year-1991 and subsequent

Entry No.9448 was a consequential entry made pursuant to the family partition made between the petitioner brothers themselvers. Mr.P. V. Hathi, learned advocate for the petitioners has submitted that the Mamlatdar had acted beyond the order of the Deputy Collector with regard to the deletion of the words "new tenure" made by the Mamlatdar by his order dated 11th April, 1991 and raised important aspects about that the Mamlatdar has not acted illegally as assume and the petitioners who had not only acted upon the said order but disposed of the land after converting the same into non-agricultural land and consequently the enuities in third parties were alrady created by the registered transactions on which the revenue officers had acted and such transaction has been pointed out by the petitioners at page nos.90 and 91 in respect to Survey No.332 of the property which is in the names of Shri Ravjibhai Mavjibhai Jogani and Shri Keshubhai Mavjibhai Jogani. Mr.P. V. Hathi, learned advocate for the petitioners has pointed out that from 1992 to 1994, there are various transaction of the sale deed has been executed between the third party and the petitioners and, therefore, on that basis the petitioners has disposed of some plots of land in question. Mr.P. V. Hathi, learned advocate for the petitioner has given details in this petition just to highlight the facts that how the unreasonable orders passed after the period of unreasonable delay by the respondents- authorities. The details are as under :-

14/07/1965 Entry No.3548 made and certified on this date.

24/02/1970 Part of the said Survey No.332 was sold by Mamlatdar as Administrator by registered deed of sale in favour of Chhagan Mavji.

06/11/1990 Application made for deletion of the subsequently inserted words "new tenure".

11/04/1991 Order passed by the Mamlatdar deleting those words from village form No.7/12.

19/06/1991 Entry No.9447 certified deleing the words "new tenure" and pursuant to the order of Mamlatdar dated 11/04/1991.

19/08/1992 Entry No.9448 certified recognising the partition effected between the brothers, petitioners.

21/03/1992} The District Development Officer granted
02/05/1994} N.A. permission to the petitioners in respect of the said land.

13/07/1994 A common show cause notice of the Collector, Amreli in respect of five

revenue entries, Annexure-E of this petition.

In the submissions of Mr.P. V. Hathi, learned advocate for the petitioners that looking to these facts and powers which have been exercised by the respondents authorities after unreasonable delay which adversely affected the rights of the petitioners as well as rights of a third party upon him the equities have been created by way of various transactions executed by the petitioners and a third party. Mr.P. V. Hathi, learned advocate for the petitioners has raised the following contentions are as under :-

(1) The respondents have no jurisdiction and authority to exercise power under section 211 in respect of the revenue entries which were made as back as in 1965 and 1991, which in turn has the effect of cancelling Entry Nos.4277 and 4278 of 1970 made in favour of third parties who are not parties to orders passed by the Collector ignoring the binding decision of the Hon'ble Supreme Court and this Hon'ble Court.

(2) That the Collector and the Secretary had no authority and jurisdiction to exercise revisional powers under section 211 of the Code after lapse of unreasonaly long period, particularly when the rights of third parties were already created and were jeoparadised by belated exercise of such power against them who were not parties before the said orders were passed.

(3) The respondents have no authority and jurisdiction to cancel Entry No.3548 which was certified in 1965 by which the name of Chhagan Mavji was entered in place of his father's name since no objection in the form of appeal was raised by any one, and that there was no justification to assume that the said revenue entry made in 1965 effected the rights of others who have never come forward in 29 years complaining about the said entry.

(4) The respondents have acted illegally in assuming that the lands were new tenure lands though the said words were not in existence in the revenue record upto 1970-71 and the subsequent insertion of the word "new tenure" could not have been made without any notice to the occupant or the purchaser and, therefore, the cancellation of

Entry Nos.9447 and 9448 could not have been made on any supposed irregularities of the revenue officers.

(5) The Collector had no ljurisdiction to cancel any orders issued by the D.D.O. under section 65 of the Code in respect of the lands in question and that he had no jurisdiction to reopen the same and or by issuing any direction to him, particularly when the orders passed by the District Panchayats were acted upon between 1992 to 1994 and the rights of the third parties were created after due permission obtained from the revenue officers.

(6) That the Secreatary (Appeals) and the Collector, Amreli have acted inconsistently in similar cases and in similar set of facts as was shown in ground no.8 as shown extensively in para 8, page 17 of the petition, particularly in the matter of entry of new tenure made in the revenue record.

(7) The order is other wise passed in breach of the principles of natural justice. The petitioner relies upon the following decisions in support of their cases.

10 GLR 992
1991 (1) GLR 113
1994 (1) GLR 822
1997 (4) GCD 234
1996 (3) GCD 635

5. Mr.Pandya, learned AGP has relied upon the affidavit-in-reply filed by the respondent - Collector, Amreli. In reply, the contentions which has been raised by the deponent that Survey No.332 of Moje Amreli were standing in the name of Amreli Taluka Mamlatdar as administrator of Shri Nagnath Mahadev Trust which has been entered by Entry No.7. With respect to acres 23-12 gunthas of the aforesaid land the name of Shri Mavji Khoda was entered by mutation Entry No.1703 as a protected tenant. Thereafter, by a mutation Entry No.3548, by way of succession the aforesaid land has been partitioned and acres 11-26 gunthas of the aforesaid land has been entered in the name of Shri Chhagan Mavji and acres 11-26 gunthas in the name of Shri Lalji Rana. As per Entry No.4277 and Entry No.4278 the same have been purchased by the tenants by a sale deed dated 24th February, 1970 on the basis of the order of the Collector dated 21st October, 1969. Nagnath Mahadev Trust was

holding lands of Survey No.1, 332 and 526 of Amreli City. The Gujarat Devasthan Inams Abolition Act, 1969 came into force on 15th November 1969. Under the provisions of section 31 of the aforesaid Act the enactments specified in column 1 of the schedule shall be amended to the extent specified in column 2 thereof. As per the schedule interalia after section 88D of the Bombay tenancy and Agricultural Lands Act, 1948. After consideration the said provision of section 88(E) of the Bombay Tenancy and Agricultural Lands Act, 1948 Shri Chhagan Mavji and Shri Lalji Rana became deemed purchasers on the date of the commencement of the Gujarat Devasthan Inams Abolition Act, 1969. The lands in question were sold to the aforesaid persons on 24th February, 1970 after the commencement of the Inams Abolition Act. Therefore, according to the deponent the sale transaction was governed by the provisions of section 88E of the Tenancy Act and, therefore, the said lands were shown to be new tenure lands in the Revenue Record. In respect to the Entry No.4278 the name of Chhagan Mavji Jogani was entered into the revenue record and certified on 20th October, 1970 and the land was shown to be new tenure land. Therefore, this lands has been governed by the provisions of section 88E of the Tenancy Act. Thereafter, after a lapse of almost 20 years, Shri Chhagan Mavji Jogani made an application dated 6th November, 1990 before the Mamlatdar, Amreli requiesting that the words "new tenure" be deleted from the revenue record. The Mamlatdar, Amreli on the one hand forwarded a proposal dated 11th April, 1991 to the Deputy Collector that the words "new tenure" had been inserted in the village Form No.7/12 by mistake in 1970-71 and to take action for deletion of same and according to the deponent on the very same date passed an order dated 11th April, 1991 wherein, the said lands being old tenure lands can be considered to be without restrictions and that it appears that the words new tenure have been entered in the Village Form No.7/12 and other records by mistake and ordered that the words be deleted from the record. According to the deponent that under the provisions of the Bombay Lands Revenue Code, 1879 and the Gujarat Lands Revenue Rules, 1972 the Mamlatdar has no jurisdiction to correct a certified entry and, therefore, the order dated 11th April, 1991 is without jurisdiction. Therefore, according to the deponent that the proposal dated 11th April, 1991 the Deputy Collector, Amreli by an order dated 18th April, 1991 rejected the application and a copy of the said order was duly served upon the petitioner no.2. According to the deponent that the Deputy Collector, Amreli by his order dated 18th April 1991 rejecting the

application of the petitioner no.2, by an Entry No.9447 dated 11th July, 1991 the mutation entry was made in terms of the order of the Mamlatdar dated 11th April, 1991 and the same was certified by the Mamlatdar on 19th August, 1991. According to the deponent that one Mr.N. P. Sarvaiya made an application to the Secretary, Gujarat Vigilance Commission pointing out several irregularities in the mutation of entries by the Mamlatdar, Amreli and ultimately, the Deputy Collector, Amreli called for a detailed report in this regard from the Mamlatdar, Amreli which has been ultimately, submitted a report on 9th June, 1994 to the Deputy Collector, Amreli and the same was sent by the Deputy Collector to the Collector, Amreli and the Collector, Amreli directed the Deputy Collector to look into the report and investigate with regard to all the issues which appear to be illegal and to send a report thereof to the Collector. Therefore, the show cause notice dated 13th July, 1994 asking the petitioners to show cause as to under Rule 108(6) of the Gujarat Land Revenue Rules in respect to Entry No.9447 and other entries mentioned in the notice should not be cancelled. The deponent has also relied upon the decision of Appex Court in the case of State of Orissa Vs. Brundaban Sharma reported in 1995 Supp (3) SCC 249. The deponent has also considered and pointed out that considering the relevant provisions of section 88E of the Tenancy Act and section 43 of the Act, hence, the same cannot be transferred without the prior permission of the Collector, which ultimately, converted into non-agricultural lands the holder is required to pay the necessary premium to the State Government and it amounts to cuasing huge financial loss to the State Government by way of premium. Therefore, according to the deponent that the orders passed by the Collector as well as the Secretary (Appeals), Revenue Department are legal and valid which do not require any interference by this Court.

6. I have heard the learned advocates appearing on behalf of the parteis. I haveperused the relevant record which has been placed before this court in this petition and also I have perused the order passed by the Collector, Amreli at Annexure-F to the petition dated 15th November, 1994. From the records, some of the facts are not disputed that petitioners' father - Mavjibhai Jogani was a protected tenant and for that no any dispute has been raised by the respondents and prior to the outright sale deed on 24th February, 1970 by the Mamlatdar, the Administrator of the Trust. Therefore, one fact clear that Mavjibhai Jogani was a protected tenant prior to the outright sale deed on 24th February,

1970 by the Mamlatdar, the Administrator of the Trust. Shri Lalji Rana was cultivating the land alongwith the said Mavjibhai Khoda before the Devasthan Inams Abolition Act, 1969 came into force on 15th November, 1969. The respondents have not disputed the recitals made in the said sale deed on 24th February, 1970 that it was the outright sale without any reference to the provisions of the Tenancy Act or that the lands were of a new tenure nature. Not only that at the relevant time no such entry in the revenue record existed when the sale deed was executed after obtaining prior permission from the Collector, Amreli and the Charity Commissioner. It is also necessary to note that the Collector, Amreli has not disputed the fact of outright sale which permission, he would not have granted on 21st October, 1969, if the entry about new tenure existed on that date. On the contrary, it is specifically mentioned in the sale deed that the provisions of the Tenancy Act were not applicable as recited in the documents. Section 88E which provides notwithstanding anything contained in section 88B with effect on and from the specified date lands which are the property of an institution for public religious worship shall cease to be exempted from the provisions of the Act except sections 31 to 31 D (both inclusive) from which they were exempted under section 88B and all certificates granted under that section in respect of such lands shall stand revoked. Where any such land ceases to be so exempted, then in the case of a tenancy subsisting immediately before the specified date the tenant shall be deemed to have purchased the land on the specified date and the provisions of sections 32 to 32R (both inclusive) shall so far as may be applicable, apply. In explanation, in the said section "specified date" means the date of the commencement of the Gujarat Devasthan Inams Abolition Act, 1969. Considering the relevant provisions of section 88E its true interpretation and the restriction contained over a "new tenure" land was applicable to the lands held by the petitioners on the date on which the Devasthan Inams Abolition Act, 1969 which came into force or on the date on which the outright sale effected by the Mamlatdar as Administror with the permission of the Collector, Amreli. The mutation Entry No.3548 made in the Year-1965 could not have been made a subject matter of enquiry because the same has nothing to do with the provisions of the Act. The said entry could not have been reopened because none of the documents produced go to show that the said entry was objected to on the said grounds of nature of land. The said Entry No.3548 passed on succession of deceased Mavjibhai Khoda and not because of any prohibition on the ground of breach of section 88E of the

Tenancy Act. Therefore, it is not corrected to see that the said land in question was governed by the provisions of section 88E of the Tenancy Act. When the transaction of sale took place on 24th February, 1970, the words "new tenure" was not in existence on the revenue record. It is also necessary to note that the words a "new tenure" could not have been inserted without notice to the petitioners. There is a Government circular dated 21st September, 1985 which specifically provide that mere mention of new tenure in the revenue record was not sufficient for passing the orders on the ground of breach of condition. The Mamlatdar, Amreli was authorised to correct the record and, therefore, there was a mistake in inserting the words new tenure in the Village Form No.7/12, particularlly when the Collector while sanctioningthe sale in favour of the father of the petitioner specifically stating in his order dated 11/02/1970 that the relevant provisions of the Tenancy Act were not applicable and, therefore, it cannot be said that the Mamlatdar, Amreli, acted unauthorisedly or had no jurisdiction to correct the revenue records. It is not the case of the respodents that the entry of new tenure was a certified entry made after due notice to the petitioners. In fact, no such entry could have been relied upon and no inquiry was held as to how the said wordes new tenure came to be inserted. Therefore, according to my opinion, the order passed by the Mamlatdar, Amreli was not ab initio null and void. It is also necessary to note that the effect of the words new tenure would not make the transaction and the consequent entry as ineffective. But if any transaction has been made would be subject to the permission of the Collector. Therefore, there is distinction between a void transaction and an invalid transaction. The two Entry Nos.9447 and 9448 have been made on the basis of the order passed by the Mamlatdar dated 11th April, 1991 and the other on 19th August, 1991 to the knowledge of all concerned and that the blame cannot be thrown on the petitioners who acted bona fide on the basis of the orders passed by the Mamlatdar and in taking subsequent actions of getting the land mutated. It is also necessary to note that the effect of the order of the Collector would at the most be that the land would continue to be new tenure land meaning thereby that there will be a prohibition for its alienation or transfer without prior permission of the Collector. But no transaction had taken place when these entries were effected and, therefore, there was no breach of any provision or condition which has been believed by the respondent - authority. The respondent - authority who relied upon the report which has been made by the Deputy

Collector to the Collector in which the Deputy Collector has specifically stated that the land has been sold to the tenant (father of the petitioners) in 1970 and that the resolutioin about the applicability of section 43 of the Tenancy Act was passed by the State Government on 10th February, 1987. The said respondent - authority has not taken into account as can be seen from his report, the specific order passed by the Collector granting permission to the Mamlatdar, Administrator to dispose of the property by an outright sale after clarifying that the provisions of the Tenancy Act were not applicable. The said resolution of 1987 was not retrospective in nature and unless the sale effected by the Mamlatdar was declared as void after resorting to the provisions under section 84-C of the Tenancy Act. The said report cannot confer jurisdiction on the Collector to exercise suomotu powers contrary to settle principle of law which has been laid down by this Court as well as Appex Court. It is also clear from the records that so far no proceedings under section 84-C of the Tenancy Act were taken as against the transaction effected by the Mamlatdar with the approval of the Collector. In light of this fact, the Collector now under the guise of exercise of power under rule 108(6) of the Land Revenue Rules cannot exercise powers on the supposition that the orders were void or without jurisdiction. It is also clear from the records that the Entry No.3548 made in the Year-1965 have taken up after period of 26 years. Though Collector has given different reasons for different entries, but there is no valid justification in respect to the Entry No.3548 which was made in the Year-1965. Shri Chhaganbhai Mavjibhai was deemed purchaser along with Lalji Rana who were jointly cultivating the said Survey No.332 in all admeasuring 23 acre 12 gunthas. The outright sale was made by the Mamlatdar in his capacity as Administrator with the permission of the Collector and the Charity Commissioner on 24th February, 1970 and, therefore, from that date the provisions contained in section 88E were not applicable as contended by respondent - authority. The restriction and prohibition contained in section 43 were made applicable only from 1987 and not prior thereto and as it was not in operation on the date on which the sale was effected in 1970. If the lands were of new tenure lands the Collector would not have granted permission after specifically stating his recital in the sale deed that the provisions of the Tenancy Act were not applicable. It is also the case of the respondent authority that the lands could have been transferred with his permission and, therefore, such transaction of the sale deed cannot consider to be hit by section 88E or by section 43 of the Tenancy Act. When the lands were

converted into non-agricultural land by the District Panchayat which is made by competent authority under section 65 of the Land Revenue Code and the Collector had no jurisdiction to challenge the action which can be said to be his own action under the Code and no enquiry was made how the words new tenure came to be introduced subsequently after the lands were sold to Chhaganbhai Mavjibhai. It is also clear from the record that the order of the Mamlatdar dated 11th April 1991 was not taken up in revision at any time either by the Deputy Collector or the Collector and the same cannot be said to be without jurisdiction or ab initio void as contended by the respondent - authority. At the most, the lands in question would be governed by new tenure requiring prior permission of the Collector before disposal and nothing beyond that can be presume against the petitioners. In fact, a reality, the whole individuals proceedings has been initiated at the instance of the dissatisfied individuals and no proper enquiry was held by the respondent - authority. From the records, it is clear that the petitioners have invested large amount and, thereafter, subsequent transactions of sale have pointed out by the petitioners that the registered sale deed in favour of a third party and in such situation, the suomotu power should not be exercised by the respondent authority beyond the reasonable time which definitely adversely effected the existing right of the petitioners as well as third party because, during the period from 1965 to 1991 and before order was passed in the Year-1994, the property in question has changed hands and the persons who are going to be adversely affected are not joined as parties and, therefore, in absence of such affected persons no adverse order can be passed in their absence.

7. Therefore, according to my view, considering the merits of the matter and reasoning which has been given by both the authorities i.e. the Collector, Amreli as well as Secretary (Appeals), Revenue Department, Ahmedabad are not proper and both the parties have committed error and come to the conclusion which is contrary to the records. The said error is apparently on the face of record because of the reason that the conclusion of both the authorities are apparently contrary to the records and it based upon assumption, presumption and surmise and conjecture. If any findings contrary to the records, it amounts to an error apparently on the face of records. Therefore, according to my opinion both the orders are considered on merits are contrary to the records and same are required to be quashed and set aside on the basis of considering the

merits of the matter. The second ground to set aside both the orders about initiating proceedings by the respondent - authority after unreasonable delay on there part while exercising the suo motu powers by the authority. The said contentions of unreasonable delay has been specifically raised by the petitiners before authorities but the authorities has ignore the said important question and not decide in the light of settled law which has been laid down by the Apex Court as well as this Court.

8. In view of the decision of this Court in the case of JANARDAN D. PATEL Vs. STATE OF GUJARAT reported in 1997 (1) GLR page 50, wherein it has been held that section 211 of the Gujarat Land Revenue Code and Rule 108, the powers of revision under Rule 108 is subject to same limitation as powers of revision under section 211. The powers must be exercised within a reasonable time as laid down in RAGHVANATHA CASE (SUPRA) (1969) 10 GLR 992 Supreme Court. The Officer exercising the powers under Land Revenue Code cannot aursurp the powers under another enactment. The procedure pointed out as to what should be done in such cases. It is also further observed by this Court that it cannot be gainsaid that the revision powers under the relevant provisions contained in Rule 108(6) of the rules are quite similar to those contained in section 211 of the Code. What applies to section 211 of the Code would apply with equal force to Rule 108(6) of the Rules. It is further observed that the revenue authorities have no jurisdiction to decide whether or not a transaction is in contravention of any statutory provisions contained in any other enactment and authority having limited jurisdiction cannot obviously expand its jurisdiction nor assume jurisdiction not conferred on it by law. Therefore, while exercising the powers under Rule 108(6), the authority has no powers to decide the validity of the transaction on the touch stone of the statutory provisions occurring in some other enactment. If any such question arise, the matter should be referred to the authority empowered to deal with under the said other enactments. It may be noted that the revenue authorities with respect to the mutation proceedings in the revenue records popularly known as RTS proceedings are invested with limited powers regarding the maintenance of revenue record for fiscal purposes and making mutation entries therein on certain contingency. Its bare perusal clearly goes to show that what is to be inquired is the correctness of the entry in the record of rights and the Registrar of mutation in accordance with law and rules framed in that regard. Thus, it becomes clear that the revenue authority exercisng the powers

with respect to the RTS proceedings are invested with the limited powers. They cannot themselves assume certain powers not conferred on them by law. The appellate authority having limited jurisdiction cannot obviously expand its jurisdiction nor can assume jurisdiction not conferred on it by law. In that view of the matter, it has no power to decide the validity of the transaction on the touch stone of the statutory provisions framed in some other enactments. Similar view has been taken by this Court in the case of EVER GREEN APARTMENT COOPERATIVE HOUSING SOCIETY LTD. V/s. SPECIAL SECRETARY (APPEALS), REVENUE DEPARTMENT reported in 1991 (1) GLR 113. It has also been considered by this Court in a case reported in 1997 (1) GLR 50.

9. Replying upon said decision of this court, considering the facts of the present case, the entry which was certified in the Year-1965 which has been taken into review by issuing show case notice on 13th July, 1994 in respect to all the entries which were made from 1965 to 1991. Therefore, the validity of the transaction cannot be examined while initiating the proceedings under Rule 108(6).

10. There are others judicial pronouncement of this court as well as Apex Court in respect to exercise the powers by the authorities after unreasonable delay and on the basis of such conclusion, the impugned order has been set aside by this Court as well as Apex court.

11. Following authorities have been cited by Mr.Hathi, learned advocate for the petitioner in support of his contention.

In case of EVER GREEN APARTMENT COOPERATIVE HOUSING SOCIETY LTD V/s. SPECIAL SECRETARY, REVENUE DEPARTMENT, GOVT OF GUJARAT, reported in 1991 (1) GLR 113. In case of PARSHOTTAM RAMAJI RATHOD V/s. D.D. MISTRY, reported in 1999 (2) GLH 310 and so also in case of SHREE RAVINDARSHAN COOPERATIVE HOUSING SOCIETY V/s. P.THAKKER, reported in 2000 (2) GLR 1639 and in case of MOHAMAD KAVI MOHAMAD AMIN V/s. FATMABAI IBRAHIM, reported in (1997) 6 SCC Supreme Court Cases 71. In case of KESHAVLAL A. MANTAR V/s. COLLECTOR in Special Civil Application No.2323/89 decided on 16th June, 2000 so also in case of GANAPAT M. SHIKARI V/s. STATE OF GUJARAT delivered in Special Civil Application No.1778 of 1987 [Coram : D. M. Dharmadhikari, CJ.] on 3rd March, 2000.

12. It is also necessary to note that one observations of the Apex Court in case of MANCHHARAM V/s.

SP PATHAK AND OTHERS, in Civil Appeal No.1262 (N) of 1978 decided on 28th September, 1983, it has been observed that:

> "Where the powers is conferred to effectuate a purpose, it has to be exercised in a reasonable manner and the reasonable exercise of power inheres its exercise within as reasonable time. This is too well established to need buttressing by precedent. However, one is readily available in State of Gujarat vs. Patel Raghav Natha and others (1970) 1 SCR 335".

13. Recently, the Apex Court has also considered the power which has been exercised by respondent authorities under section 84-C under suo motu inquiry by Mamlatdar should be initiated within reasonable time. Sale of land taking place in December, 1972, the suo motu inquiry started in September, 1973, it was held that suo motu power under section 84-C, not exercised within reasonable time.

14. In all the decisions which have been cited by the learned advocate Mr.Hathi of this Court as well as of Apex Court, the question of exercise of powers by the authorities within reasonable period or not has been examined in light of the facts that when no period of limitation has been specified under the statutory provisions. In case of MOHAMAD KAVI MOHAMAD AMIN V/s. FATMABAI IBRAHIM (1997) 6 SCC 71, even more than 1 year delay has been considered by the Apex Court unreasonable while exercising the suo motu powers under section 84-C of the Bombay Tenancy and Agricultural Lands Act, 1976 and, therefore, considering this decision of the Apex Court and the facts of the present case, wherein at least more than 29 years period have been passed for initiating the proceedings under Rule 108(6) of the Bombay Land Revenue Rules. In the light of these judicial pronouncements,the transaction of sale deed and necessary entries which were made pursuant to the sale deed during the period from 1965 to 1991 which has been taken into revision by exercising the suo motu powers under Rule 108(6) of the Bombay Land Revenue Rules by issuing the show cause notice dated 13th July, 1994. The show cause notice was issued to the petitioner under the provisions of Rule 108(6) of the Land Revenue Rules, as to why the revenue record entry certified during the period from 1965 to 1991 should not be revived, therefore, there is a delay of about 29 years for initiating the proceedings under Rule 108(6). In such situation, it must be presumed that meanwhile the land in question remained

with the petitioners and according to the petitioners many subsequent transaction has been executed between the parties and during this period, the interest and equity in favour of third party has also created on the basis of various transactions in respect of lands in question executed by the respective parties. Meanwhile, the petitioner and third party has also created interest and equity in their favour and the possession of the lands in question which has been remained with the third party since many years and, therefore, considering all facts which are on record totally unreasonable exercise of powers after about more than 29 years by the respondents - authorities. According to my opinion, considering the various decisions of this court as well as Apex Court as referred to above, I hold that the action under the Act which was taken by the respondent authorities after undue and unreasonable delay of more than 29 years which requires to be set aside.

15. Therefore, on both grounds on merits as well as on the ground of unreasonable delay and undue delay in exercising the suo motu powers of the respondent authorities under the relevant provisions of Bombay Land Revenue Rules. The present petition is required to be allowed and both orders passed by the Collector, Amreli dated 15th November, 1994 and Secretary (Appeals), Revenue Department, Ahmedabad dated 28th April, 1995 are hereby quashed and set aside and in the result thereof, it is directed to the respondents not to act an implemented the orders are in question in any manner and to treat the disputed Survey No.332 (Part) after restoring the said revenue Entry Nos.3548, 9447 and 9448 in the revenue record. The present petition is fully allowed. Rule is made absolute to that extent.

(H. K. Rathod,J.)

(vijay)